



Economic Impact Analysis Virginia Department of Planning and Budget

18 VAC 145-30 – Regulations Governing Certified Professional Wetland Delineators Department of Professional and Occupational Regulation April 21, 2003

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.G of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007.G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the Proposed Regulation

Chapter 784 of the Acts of the 2002 General Assembly created a certification designation for wetland delineators, amended the Virginia Board for Professional Soil Scientists to become the Virginia Board for Professional Soil Scientists and Wetland Professionals, and changed the board's membership to reflect the new certification program. The proposed new regulations set forth: 1) definitions, 2) qualification standards for the wetland delineator certification, 3) renewal and reinstatement standards, 4) standards of practice and conduct, and 5) grounds for disciplinary action. Wetland delineator certification will first become effective on July 1, 2004. With few exceptions, as noted in the text that follows, the board has little discretion in the implementation of this regulation, since most of the specific provisions are contained in the statutory language.

Estimated Economic Impact

Currently the Commonwealth does not certify wetland delineators. The proposed certification for wetland delineators is optional; individuals will be able to continue to work as

wetland delineators without certification. On the other hand, the existence of the state certification program will give certified delineators a decided competitive advantage over non-certified delineators, allowing certified delineators to charge a higher price for their services. This competitive advantage arises for two reasons. First, the certification is likely to be taken as a signal of quality in a field where actual skills are costly to observe. Second, many of the firms needing to hire a delineator may be subject to legal sanction if the wetland delineation is not carried out properly. In that case, hiring a non-certified delineator may be taken as evidence that the firm did not take adequate care and may increase the firm's risk of legal liability. If certification does become a *de facto* standard of care, then hiring non-certified delineators is no longer a realistic option, even if the firm judges that the skills of a non-certified delineator are greater than those of the available certified delineators.

These rules will restrict the supply of certified delineators and will increase the cost of using their services. They will also lower the wages for non-certified delineators. To evaluate the economic impact of this certification program, it is necessary to ask whether the certification standards will actually increase the quality of wetlands delineation work carried out in Virginia and whether any increase in quality, if it does occur, is worth the additional cost that will be imposed on the users of these services who may feel that they have little choice but to use the certified delineators.

Section § 54.1-2206.2.A of the Code of Virginia requires that individuals meet the following requirements for wetland delineator certification: achieve a score acceptable to the Board for Professional Social Scientists and Wetland Professionals (board) on an examination on the principles and practice of wetland delineation, provide three written references from wetland professionals with at least one from a certified wetland delineator, and satisfy one of the following criteria:

1. Hold a bachelor's degree from an accredited institution of higher education in a wetland science, biology, biological engineering, civil and environmental engineering, ecology, soil science, geology, hydrology or any similar biological, physical, natural science or environmental engineering curriculum that has been approved by the board; have successfully completed a course of instruction in state and federal

- wetland delineation methods that has been approved by the board; and have at least four years of experience in wetland delineation under the supervision of a certified wetland delineator, the quality of which demonstrates to the board that the applicant is competent to practice as a certified professional wetland delineator;
2. Have a record of at least six years of experience in wetland delineation under the supervision of a certified professional wetland delineator, the quality of which demonstrates to the board that the applicant is competent to practice as a certified professional wetland delineator; or
 3. Have a record of at least four years of experience in wetland science research or as a teacher of wetlands curriculum in an accredited institution of higher education, the quality of which demonstrates to the board that the applicant is competent to practice as a certified professional wetland delineator.

Section § 54.1-2206.2.B waives the requirement for a reference from and supervision by a certified professional wetland delineator for the first two years of the program, i.e., July 1, 2004 to June 30, 2006. Further, Section § 54.1-2206.B waives the examination requirement for individuals with at least ten years of experience who submit complete applications during that two-year period, but not after.¹

The proposed regulations reiterate these requirements and waivers. In effect, these requirements will allow individuals with ten years of experience to qualify for certification during July 1, 2004 to June 30, 2006 (fiscal years 2005 and 2006, FY05 and 06) without passing an exam, being required to take any courses, or having had supervised experience, but will essentially prevent any individuals who are not wetland science researchers or teachers from becoming certified during July 1, 2006 to June 30, 2008 (FY07 and 08). This is the case because individuals who are not wetland science researchers or teachers are required to be supervised by a certified wetland delineator for at least four years before they are permitted to take a qualifying

¹ Sections 54.1-2206.2.A-2206.B waive the examination requirement for an individual who “holds an unexpired certificate or its equivalent issued by a regulatory body of another state, territory or possession of the United States or has been provisionally certified under the U.S. Army Corps of Engineers Wetland Delineator Program of 1993 and

examination if they are applying for certification after June 30, 2006. But, the certification program starts on July 1, 2004; thus, no one who did not complete their experience requirement before July 1, 2006 will be able to receive four years or more of supervision by a certified wetland delineator prior to July 1, 2008. What is worse, those individuals who already have substantial delineation experience by July 1, 2006 but have not completed their experience requirements will find that their experience does not count toward certification. This is not only costly to those individuals seeking certification. It will create an artificial shortage of wetlands delineators and will significantly raise the price for certified delineators for several years.

After the two-year blackout period during FY07 and 08, applicants who have a bachelor's degree in a board-approved field, have acquired a minimum number of course credits in three field areas proposed by the board (see discussion below), have successfully completed a course of instruction in state and federal wetland delineation methods that has been approved by the board, and have at least four years of experience in wetland delineation under the supervision of a certified wetland delineator, will be permitted to take a board-approved examination which they need to pass in order to obtain certification.

After June 30, 2006, individuals who do not satisfy the bachelor degree requirement in a board-approved field or have not acquired the minimum number of course credits in three field areas proposed by the board, will not be permitted to take the qualification exam until July 1, 2010 or thereafter. This is the case because a certified wetland delineator must supervise these individuals for at least six years before they are permitted to take a qualifying examination and, as described above, there will be no certified wetland delineators prior to July 1, 2004.

Ignoring for a moment the substance of the certification standards, the timing of the implementation of these standards will induce a shortage of certified delineators for several years following the July 1, 2004 implementation date. With the exception of researchers in colleges and universities, no new delineators can get certified during FY07 and 08. In addition, only those practitioners who have **completed** their experience requirement by July 1, 2006 can use their prior experience to count towards the experience requirements for certification. Thus, while few new certified delineators will become available during FY07 and 08, the next few

is not the subject of any disciplinary proceeding before such a regulatory body, which could result in the suspension or revocation of his certificate ...”

years will also have significantly reduced rates of certification. Those candidates for certification who would have become certified during those years had their experience been counted, will have to start over in earning experience.

A wetlands delineator (without a qualifying bachelor's degree) that began work on June 15, 2000 could qualify for certification by June 30, 2006, with six years of qualifying experience. However, if this same individual had instead begun employment only one month later, on July 15, 2000, she would not have a full six years of experience by the June 30, 2006 deadline. At best, assuming she could acquire a certified supervisor on July 1, 2004 (the earliest possible date), she would need to wait four additional years (until July 2010) before qualifying for certification. This result is not only inequitable; it is not based on policy-relevant differences between the two candidates. It wastes valuable resources with no prospect of a commensurate gain.

The shortage of certified delineators can be expected to artificially raise the rates charged by certified delineators, to lower the wages of those who need extensive apprentice periods, and to increase costs of those purchasing delineator services.

The proposed regulations specify the type of experience it will approve for certification qualification. For non-researchers and non-teachers, successful applicants must have experience "as a wetlands professional" that satisfies one of the following two requirements:

(1)... the preparation of no less than ten reports, which must be no more than ten years old at time of receipt by the board office, delineating wetlands in accordance with applicable state and federal regulations which include the proper identification of vegetation, soil and hydrology indicators. At least six of the ten reports must be for non-tidal wetlands. At least three of the reports must have confirmation letters from the applicable state or federal regulatory body certifying that they are correct;

Or,

(2) ... the *inspection, review or confirmation* of no less than ten reports, which must be no more than ten years old at time of receipt by the board office, delineating wetlands in accordance with applicable state and federal

regulations which include the proper identification, soil and hydrology indicators. At least six of the ten reports must be for non-tidal wetlands. (Italics added.)

The statute provides that, for those applicants seeking certification after at least 6 years of *experience*, there are no coursework requirements. For those with 10 years of *experience* prior to July 1, 2006, there are no exam requirements nor any coursework requirements.

The second experience path involving “the *inspection, review or confirmation* of no less than ten reports” is language chosen by the board to implement a statutory provision aimed at allowing skilled staff at agencies such as the Department of Environmental Quality, who have had the responsibility for implementing wetlands regulations, to be granted grandfathered status. Under this language, one can obtain certification as a wetlands delineator without any test or coursework and having experience that amounts to having *inspected, reviewed or confirmed* ten wetlands delineation reports over the previous ten years. And there is no requirement that this inspection and review work be evaluated for quality, completeness, accuracy, or technical merit. It is easy to envision cases where such experience could be of very little value in determining how qualified an individual is to make technically sound evaluations of wetlands, and yet the certification will be granted nonetheless.

The design of the experience requirements does not appear to be closely related to the purpose of the certification provisions.² It is unclear why the number of “years of experience” is a relevant factor at all. As recognized in the regulation, years of experience are not directly related to the amount of wetlands delineation work actually carried out during this period. It seems likely that a person having completed five studies in three years would be a much more qualified individual than one who reviewed ten studies in ten years. Yet, the latter person can be certified while the former cannot.

The grandfathering of all delineators who have ten years of experience before July 1, 2006 is particularly troublesome. As already mentioned, these delineators are certified without passing an examination, without course requirements, and without restrictive supervision rules.

² The statutory framework is very specific about the years of experience requirements and leaves the board with little or no flexibility concerning these requirements.

And yet, these grandfathered certified delineators are the only people who will be available to supervise new candidates for certification.

If the certification standards are intended to serve as a signal of minimum competency, then these grandfathering provisions will do substantial damage to any value that the program might otherwise have. Outside of academic researchers, the only certified wetland delineators available for the first four years of the program (FY04 through FY07) have not demonstrated the level of background or competency considered essential for anyone applying later. This renders the certification highly suspect for the first four years of the program and beyond.

That these grandfathered delineators will be the only people available for supervision of new delineators leads to the likelihood that candidates for certification may be supervised by existing delineators with not only less training but even less actual experience than the candidate. For example, a candidate with a degree in hydrogeology (even an advanced degree) may have four years of supervision by someone with no degree requirement whatsoever. Or a grandfathered delineator who did three studies during the previous ten years may supervise a candidate who has completed five studies during two initial years of supervision. In either case, the grandfathered delineator would not have had to demonstrate even minimal competence by passing the exam required of all other certified delineators.

As currently designed, this proposed government certification program will provide a very inaccurate signal of quality. Individuals who have worked for ten years or more as a delineator prior to July 1, 2006 will be able to obtain certification without an objective demonstration of their abilities. They may be certified without passing a qualification examination and without taking and passing field related courses. Highly trained delineators who may be able to easily pass a qualification exam will not be permitted to become certified from July 1, 2006 to June 30, 2008. Delineators who can pass the qualifying exam and have a bachelor's degree in a relevant field, but who do not have the minimum number of credits in all three of the general fields proposed by the board, will not be permitted to become certified from July 1, 2006 to June 30, 2010. Thus, individuals who may not be able to pass a qualifying exam and who have not taken and passed field related courses could be certified, while highly-skilled, highly-trained delineators who could easily demonstrate their abilities in an objective manner are

prevented from obtaining certification. This situation is not just costly to those delineators who are prevented from obtaining certification. It is costly to the public. As discussed in the first paragraph of this section, many purchasers of wetland delineator services will primarily or perhaps exclusively consider certified providers due to liability concerns and absence of knowledge of delineators' abilities outside of the certification signal.

In the context of wetlands regulation, the hiring of a certified delineator as opposed to an uncertified one may be seen as part of the regulatory program. The use of certified delineators may become essential in demonstrating to regulators that all feasible steps have been taken to comply with the law. It is critical then that the certification program be rationally designed to aid regulatory compliance rather than hinder it. This program appears likely to produce certifications that are not indicative of actual minimum competencies. In addition, the structure of this certification program will generate a significant shortage of certified delineators at a time when demand for these services will be in ever greater demand. This artificially generated shortage is likely to be very costly but is not necessary and could be avoided by modest changes to the design of the program.

Businesses and Entities Affected

The Department of Professional and Occupational Regulation expects approximately 100 individuals to obtain certification as wetland delineators. Organizations and individuals that hire wetland delineators will be affected as well.

Localities Particularly Affected

All Virginia localities are potentially affected. Areas with relatively large amounts of wetlands and areas with relatively large amounts of proposed land development will be particularly affected.

Projected Impact on Employment

The certification program will increase work for delineators who can become certified, and will reduce work for delineators who are unable to become certified. By increasing the cost of obtaining certified delineators, this proposal will increase costs for a number of businesses and could have a small negative effect on employment.

Effects on the Use and Value of Private Property

Land developers will likely pay higher fees to delineators. This will reduce by a small amount the value of developing some properties.